IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL ST.NO.22219 OF 2004

The Oriental Fire & General
Insurance Co.Ltd. ...Appellant
vs.
Smt.Nanda Vilas Panchmukhe & Ors. ...Respondents

Mr.J.S.Chandnani for the Appellant
Mr.R.S.Khadapkar i/b Mr.R.G.Ketkar for Respondent No.6 to 20

CORAM: A.S.OKA,J.
DATE : DECEMBER 6,2007.

P.C.:

1. Heard Advocate for the Appellant. The Appeal is preferred by the Oriental Fire and General Insurance Company Ltd. taking exception to the Judgment and Award dated 21st August 2003 passed by the learned Member of the Motor Accident Claims Tribunal.

2. The Appellant is the insurer of the bus of the Pune Municipal Corporation transport which is involved in the accident. The claim filed by the Respondent Nos.1 to 4 has arisen out of a fatal accident. The claim petition was earlier decided by the Judgment and Order dated 20th September 1993. The Tribunal held that the liability of the insurance company is unlimited. The Tribunal directed the opponents to the claim application to jointly and severally pay a sum of Rs.1,35,000/- inclusive of no fault liability with interest at the rate of 12% p.a. from the date of application. Similar Awards were made in two other claim petitions arising out of

the same accident. All the three Awards were challenged by the present Appellant by preferring the Appeals. By a common Judgment the three Appeals were disposed of on 8th February 2002. This court remanded the claim petitions to the Tribunal to frame proper issue as regards maximum limit of liability of the insurance company and also gave liberty to the parties to lead evidence in relation to the said issue and directed the Tribunal to pass appropriate order accordingly. The remand was confined only to the contention raised by the Appellant that the liability of the Appellant was limited i.e. only to the extent of Rs.15,000/- per passenger. Thus, the order of remand was made only for deciding the said issue and this court did not disturb the view taken by the tribunal as regards negligence and the quantum of compensation.

3. The submission of the learned Advocate for the Appellant is that after the remand, the learned Member of the Tribunal has not given independent reasons and has incorporated the reasons recorded in the earlier Judgment which has been set aside by this court. He submitted that the learned Judge has not complied with the direction contained in the order of remand passed by this court. The learned counsel for the Respondent Nos.1 and 2 has tendered on record a copy of Judgment and Order dated 27th July 2007 in F.A.No.140 of 2004. First Appeal No.140 of 2004 was preferred by the Appellant for challenging the another Judgment and Award passed by the

Tribunal which is covered by order dated 8th January 2002 passed by this Court. The learned Judge of this Court has confirmed the Award made by the tribunal by holding that the Appellant has failed to prove that the liability of the Appellant was limited.

4. Perusal of the impugned Judgment and Award shows that the tribunal found on scrutiny of the certificate of insurance produced at Exh.58 that there is nothing to show that the liability of the insurer was limited to Rs.15,000/-. It is true that while recording the said finding the learned Trial Judge has observed that he is adopting the said course for the reasons given by his predecessor in paragraph 13 and 14 of the earlier Judgment. However, it must be noted that the learned Member has considered the documentary evidence placed on record after remand and after referring to the reasons recorded in paragraph 13 and 14 of the earlier Judgment has recorded that he agrees with the reasons recorded therein. In paragraph 5 of the impugned Judgment, the learned Member of the Tribunal has held that the Appellant has completely failed to prove the terms and conditions of the policy of the insurance and more particularly the condition regarding its limited liability.

5. It must be noted here that the Tribunal is not a civil court. Therefore, no fault can be found with the tribunal

when it recorded the agreement with reasons given in the earlier Judgment after considering the entire material which was on record after remand. Apart from all this, there is a clear finding that the certificate of insurance did not provide for the limited liability to the extent of Rs.15,000/-.

6. Considering what is stated above, and considering the Judgment of this Court in First Appeal No.140 of 2004, there is no merit in the Appeal and the same is accordingly dismissed. No order as to costs.

JUDGE